



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

TO: Service List in Solar Massachusetts Renewable Target Tariff, D.P.U. 17-140

VIA First Class Mail/Electronic Mail

FROM: Staci Rubin, Hearing Officer

RE: Procedural Notice and Ground Rules

DATE: November 13, 2017

CC: Mark D. Marini, Secretary

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### **PROCEDURAL NOTICE AND GROUND RULES**

#### **I. PROCEDURAL SCHEDULE**

On September 12, 2017, Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy (collectively "Electric Distribution Companies") filed a Solar Massachusetts Renewable Target tariff to implement An Act Relative to Solar Energy, St. 2016, c. 75, § 11(b), G. L. c. 25A, § 6, and 225 CMR 20.00. The Department of Public Utilities ("Department") held a procedural conference on October 24, 2017. At the procedural conference, parties discussed a proposed procedural schedule. The Department took the proposed procedural schedule under advisement.

Pursuant to 220 CMR 1.06(5), the Department establishes the following schedule for this matter. In setting this schedule, the Department has given careful consideration to several important factors including: allowing the necessary time to develop a complete evidentiary record; affording all parties a reasonable time to conduct discovery and file testimony and exhibits; and reserving sufficient time for deliberation by the Commission. In establishing the schedule, the Department also has considered its obligation to conduct all of its proceedings in an efficient and orderly manner.

<b>ACTION</b>	<b>DATE</b>
<b><u>Discovery, Public Hearings, and Pre-Evidentiary Hearing Phase</u></b>	
January 12, 2018	Deadline for Intervenors to provide notice of intent to file testimony.
January 24, 2018	Deadline for Intervenors to file direct testimony.
January 26, 2018	Reply Comment Deadline.
February 6, 2018	Deadline for Electric Distribution Companies to file rebuttal testimony.
February 20, 2018	Deadline for Intervenors to file surrebuttal testimony.
February 23, 2018	Deadline for issuing discovery to Electric Distribution Companies and Intervenors.
March 9, 2018	Final discovery responses due from Electric Distribution Companies and Intervenors.
<b><u>Evidentiary Hearing Phase</u></b>	
March 14-16, 2018	Evidentiary Hearings. <sup>1</sup>
<b><u>Briefing Phase</u></b>	
March 30, 2018	Deadline for Intervenors to file initial briefs. <sup>2</sup>
April 13, 2018	Deadline for Electric Distribution Companies to file initial brief.
April 20, 2018	Deadline for Intervenors to file reply briefs.
April 27, 2018	Deadline for Electric Distribution Companies to file reply brief.

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<sup>1</sup> The specific order of witnesses will be determined following receipt of intervenor testimony. However, the Department expects that all counsel and witnesses will be available during the time reserved for evidentiary hearings.

<sup>2</sup> Any Limited Participant seeking to file comments in accordance with the briefing schedule shall adhere to the deadlines applicable to the Intervenors.

II. SERVICE LIST

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FOR: Associated Industries of Massachusetts  
Limited Participant

### III. GROUND RULES

#### A. Generally

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 CMR 1.00, the Procedural Rules of the Department. In addition, the following ground rules shall supplement the Department's procedural rules in the conduct of this proceeding. These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

#### B. Filing of Documents

##### 1. Address of Filings

The original of all documents must be filed with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Fifth Floor, Boston, Massachusetts, 02110. Unless otherwise noted, the original must be filed with the Department by 5:00 p.m. on the applicable due date.

##### 2. Number and Distribution of Paper Documents

For this proceeding, the Department requires paper documents to be filed and distributed in the following manner:

<u>Type of Document</u>	<u>Number of Copies</u>	<u>Distribution</u>
Prefiled Testimony	1 original	Original to Department Secretary
Information Requests and Responses	1 original	Original to Department Secretary
Responses to Record Requests	1 original	Original to Department Secretary

Bulk Responses (100 pages and more)	1 original <sup>3</sup>	Original to Department Secretary
Pleadings, Motions, and Memoranda	1 original and 1 copy	Original to Department Secretary and 1 copy to Hearing Officer
Briefs	1 original and 1 copy	Original to Department Secretary and 1 copy to Hearing Officer

### 3. Format

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter (also three-hole punched) describing the filing and noting the distribution of copies. Responses to information and record requests shall contain the following information: (1) set and question number; (2) recitation of request; and (3) identity of the person who will support the response. Unless otherwise directed by the Hearing Officer, all responses to information requests should be pre-marked for identification in the upper right-hand corner in the following format:

D.P.U.:           17-140  
Exhibit:  
Date:  
H.O.:             Staci Rubin

### 4. Electronic Filing

All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dpu.efiling@state.ma.us](mailto:dpu.efiling@state.ma.us) and [Staci.Rubin@state.ma.us](mailto:Staci.Rubin@state.ma.us); or (2) on a CD-ROM.<sup>4</sup> The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 17-140); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. In addition, if the petitioner,

<sup>3</sup> If any party is unable to submit a bulk response electronically, the party must contact the Hearing Officer in advance to explain why it is not filing electronically. The Hearing Officer will then determine whether additional paper copies are needed.

<sup>4</sup> If any party is unable to submit any response electronically, the party must contact the Hearing Officer in advance to explain why it is not filing electronically. The Hearing Officer will then determine whether additional paper copies are needed.

applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website: <http://web1.env.state.ma.us/DPU/FileRoom>.<sup>5</sup>

Electronic copies must also be provided to all persons on the service list for this proceeding. Parties filing documents containing proprietary or other confidential materials shall submit electronic copies of the redacted public version of such documents (see rules on protected materials below).

#### C. Exchange of Materials

All documents filed with the Department shall also be served upon each party. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, e-mail, or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery alone should be avoided in the exchange of discovery material. Where material is exchanged electronically, a follow-up copy of the material must be delivered by mail or by hand. Electronic delivery is not a substitute for filing the original of materials that must be submitted to Mark D. Marini, Secretary of the Department. All materials shall be deemed to be filed or received on the date on which the original filing is received (via mail or hand delivery) by the Department Secretary.

#### D. Motions

Consistent with 220 CMR 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes requests for confidential treatment, extensions of time deadlines, or continuances of hearing dates. The moving party shall serve with the motion a statement of reasons, including the supporting authorities, why the motion should be granted. A statement of reasons may be included in the motion itself or may be contained in a separate document. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A party opposing a motion may serve an opposition within five (5) business days of such filing. Papers not served with the motion or answer/opposition may be filed only with leave of the Hearing Officer.

For all motions and other interlocutory matters, copies of any cited cases, decisions or other supporting authorities shall be provided to the Hearing Officer in a separate appendix to the motion.

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<sup>5</sup> Click on "Dockets/Filings," select "Dockets by Number," and enter "17-140."



E. Discovery

1. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence. Each response to an information request shall be provided electronically in a separate PDF document.

Parties shall provide responses to information requests within ten (10) business days of receipt of the request, unless otherwise indicated.

For the purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

2. Protected Materials

a. Introduction

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. See G.L. c. 25, § 5D; G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth.

b. Confidential Materials

The Department has formalized its requirements for motions seeking to protect records from public disclosure in 220 CMR 1.04(5)(e). A party requesting confidential treatment must submit the request in writing at the time of filing and 220 CMR 1.04(5)(e) provides that a party moving for a protective order shall substantiate its motion, which shall be treated as a public record, with the following information: (1) the time period for which confidential treatment is desired; (2) the reason the record was provided to the Department and the date of submittal; (3) a precise description of the information to be protected; (4) the reasons for claim of confidentiality, including proof that an exemption to public disclosure applies; (5) proof of the harm of public disclosure; (6) the extent to which the record or its contents has been disclosed to other persons or to federal, state and local agencies, including the status of any requests for confidentiality; and (7) a certification to the best of the moving party's knowledge, information and belief, that the information is not customarily available in the public domain. The party seeking such treatment bears the burden of demonstrating that

the materials should be afforded the treatment requested notwithstanding the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

In conjunction with a motion for protection from public disclosure, one unredacted copy of the materials for which protection is sought must be filed directly with the Hearing Officer. The unredacted copy should be submitted in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope as well as on each page of the materials. A redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

c. Critical Energy Infrastructure Information ("CEII")

Where a party seeks protection for information that may constitute CEII pursuant to G.L. c. 4, § 7, cl. twenty-sixth (n), the party must submit the request in writing at the time of filing pursuant to the following procedure. First, the party must physically segregate the pages containing CEII and mark each page with "Contains CEII -- Do Not Release." The party shall submit the unredacted copy of the materials directly to the Hearing Officer in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope. If possible, a redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

Second, the party shall substantiate its request with a statement of justification, which shall be treated as a public record. The statement must contain the following information: (1) the reason the record was provided to the Department and the date of submittal; (2) a precise description of the information to be protected; and (3) the reasons for the claim of CEII and the harm of public disclosure.

3. Discovery Disputes

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each

information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

F. Hearing Exhibits

1. Exhibit Format

All exhibits provided to the Department must be pre-marked in the upper right-hand corner of each page of the exhibit with (1) the docket number of the proceeding, (2) the exhibit number for identification, and (3) the date the exhibit is offered for identification using the following format:

D.P.U.: 17-140  
Exhibit:  
Date:  
H.O.: Staci Rubin

In addition, any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify the method of addition on the record upon presentation for marking. Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must move to enter the missing part(s) into the record. Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

2. Offering of Exhibits Not Previously Provided

The proponent of an exhibit that is not already in the possession of the Department must serve additional copies of the proposed exhibit on the Department, as provided for in the ground rules or otherwise directed by the presiding officer, at least seven (7) days prior to the hearing at which such exhibit is to be offered. 220 CMR 1.10(5)(a). The exhibit must be in the format outlined in Section III.F.1., above. Nonconforming documents will not be accepted.

### 3. Late-Filed Exhibits

Exhibits offered after the close of the hearings labor under a heavy burden of untimeliness. Late-filed exhibits must be accompanied by a motion to reopen the record and be supported by appropriate affidavits. Only for good cause shown will such exhibits be marked and admitted into evidence. See 220 CMR 1.04(5), 1.11(7), (8).

#### G. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. 220 CMR 1.06(5)(h). As such, they are part of the evidentiary record, unless challenged as unresponsive and stricken in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth (5<sup>th</sup>) business day following the day on which the request is made. Objections to record requests shall be made at the time the request is made and in no event later than the end (5:00 p.m.) of the next business day.

#### H. Hearing Arrangements

All evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, Massachusetts. The hearings will begin each day at 10:00 a.m., according to the established schedule and will run until 5:00 p.m. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.